UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/CN.9/SR.596
3 April 1997

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Twenty-ninth session

SUMMARY RECORD OF THE 596th MEETING

Held at Headquarters, New York,
on Wednesday, 5 June 1996, at 3 p.m.

Chairman: Mrs. PIAGGI de VANOSSI (Argentina)

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The meeting was called to order at 3.20 p.m.

ELECTION OF OFFICERS (continued)

1. The CHAIRMAN invited the Commission to elect three Vice-Chairmen.

2. Mr. GOH (Singapore) nominated Mr. Piyavaj Niyom-Rerks (Thailand).

3. Mr. AUSTEN (Poland) nominated Mr. Varšo (Slovakia).

4. Mr. Piyavaj Niyom-Rerks (Thailand) and Mr. Varšo (Slovakia) were elected Vice-Chairmen by acclamation.

ELECTRONIC DATA INTERCHANGE: DRAFT MODEL LAW; POSSIBLE FUTURE WORK (continued) (A/50/17; A/CN.9/421 and 426)

Article "x" (continued)

5. The CHAIRMAN invited the Commission to resume its consideration of draft article "x", contained in the annex to document A/CN.9/421.

6. Mr. MADRID (Spain) said that the wording of paragraph 4 did not seem to provide for situations in which a right was to be acquired by a group of persons pro indiviso.

7. Mr. LLOYD (Australia) suggested that the drafting group should consider whether the words "that rule is satisfied" in the third line of paragraph 4 should be replaced by the phrase "that requirement is met", and whether in paragraph 2, the word "condition" should be avoided because of its very specific meaning in the contract law of several countries.

8. Mr. MASUD (Observer for Pakistan) suggested that the words "is to be granted to" should be deleted from the first line of paragraph 4 and that the words "the requirement of" should be added before the words "that rule".

9. Mr. MAZZONI (Italy) proposed that, after the words "one or more data message", the remainder of paragraph 4 should be amended to read "provided that the method used to effect such conveyance is reliable enough as to designate as beneficiary of such conveyance the intended person only and no other person".

10. Mr. DONG Yi (China) wondered whether the use of the words "by any means which includes the use of one or more data message" meant that the paragraph was intended to be applicable to means other than data messages.

11. Mr. SORIEUL (International Trade Law Branch) recalled that article "x" was intended to be applied only to contracts involving data messages; perhaps the drafting of paragraph 4 could be made more clear in that respect.

12. Mr. CHANDLER (United States of America) agreed that it was a drafting problem. The beginning of the paragraph should refer to "any right or obligation pursuant to a contract of carriage of goods".

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13. Mr. MADRID (Spain) said that the wording proposed by the representative of Italy was a significant improvement; however, the question of reliability should be borne in mind with respect to the identification of the right of obligation to be acquired, as well as the addressee. As to the expression "by any means" in the third line, it should be made clear whether the reference was to legal or technical means.

14. Mr. HOWLAND (United Kingdom) said that it should be specified that the rights and obligations referred to were those listed in paragraphs 1 (f) and 1 (g). As to the issue of reliability raised by the representative of Spain, the Commission might feel that it was adequately addressed in paragraph 5.

15. Mr. MADRID (Spain) said that it would be wrong to restrict the application of paragraph 4 to the rights and obligations listed in paragraphs 1 (f) and (g), since paragraph 4 was designed to apply to the entire article.

16. Mr. SORIEUL (International Trade Law Branch) agreed with the representative of Spain that the scope of the article should be clarified. However, as he understood it, the United Kingdom proposal had been intended not to restrict that scope, but to avoid the danger of an excessively broad interpretation.

17. Mr. MAZZONI (Italy) suggested that paragraph 5 should begin with a broader formulation, such as "For the purposes of paragraph 3", since the rule might come into play even if nobody raised a question, and guidance needed to be provided.

18. Mr. LLOYD (Australia) supported the proposal by the representative of Italy. The reference should be to paragraph 4.

19. Mr. HOWLAND (United Kingdom) and Mr. CHANDLER (United States of America) said that they, too, supported the proposal.

20. Paragraph 5, as amended, was adopted.

21. Mr. CHANDLER (United States of America) said that excess verbiage should be cut from paragraph 6. The word "rendered" should be deleted.

22. Mr. HOWLAND (United Kingdom) said he could agree to that deletion but would prefer to leave the rest of the paragraph unchanged.

23. Mr. MADRID (Spain) said that the paragraph could be simplified even further and must not imply any discrimination between paper documents and data messages.

24. Mr. CHANDLER (United States of America) said that problems arose because the definition of a bill of lading varied from country to country. In some cases a country might not consider an electronic data message to be a bill of lading. Paragraphs 2 and 6 therefore dealt with entirely different concepts.

25. Mr. HOWLAND (United Kingdom) said that the issue had been considered by the Working Group in considerable depth, and it had been decided that the best approach was a minimalist, permissive approach, which was embodied in paragraph 6. The paragraph left open the possibility of being selective

according to the customs, practices and rules applicable in different countries. Therefore, for the very reasons put forward by the United States representative, his delegation would prefer to keep paragraph 6 unchanged.

26. Mr. RENGER (Germany) said that the drastic changes sought by the United States representative went further than the Working Group had been able to go. He would prefer to retain the current wording of paragraph 6, with the possible deletion of the word "rendered".

27. Mr. LLOYD (Australia) said that in paragraph 6 as currently drafted there was insufficient connection between paper contracts and data message contracts. A formulation was needed which would connect the two types of contracts.

28. Mr. TELL (France) said that the existing text should be retained as a compromise solution reached in the Working Group.

The meeting was suspended at 4.35 p.m. and resumed at 5.15 p.m.

29. Ms. REMSU (Observer for Canada) agreed to the deletion of the word "rendered" in paragraph 6. The Australian delegation's concern about linking the contract of carriage in the first line with the rest of the paragraph could be accommodated by the insertion of the word "such" before the words "a contract of carriage" in the second and third lines.

30. Mr. ILLESCAS (Spain) said that he favoured the wording "the rules shall be applicable" because it was more explicit. The current wording of paragraph 6 was ambiguous. His delegation was concerned about ensuring that rules of national origin which were compulsory when the carriage, bill of lading and the contract were on paper should be equally compulsory when the contract, carriage and bill of lading were sent by data message.

31. Mr. RENGER (Germany) disagreed with the change suggested by the representative of Spain. In his view, the current wording of paragraph 6 accommodated all the reservations raised by delegations, and the compromise reached by the Working Group should not be called into question.

32. Mr. HOWLAND (United Kingdom) said that, except for the deletion of the word "rendered", his delegation was satisfied with the current wording of the text. However, the addition of the words "of a certain kind" after the words "a paper document" in the second line of paragraph 6 might help some of the other delegations to accept the text.

33. Mr. LLOYD (Australia) suggested the insertion of the word "such" after the words "inapplicable to" in the second line of paragraph 6, without which the clause ran the risk of applying laws which were inappropriate for a contract.

34. Mr. HOWLAND (United Kingdom), supported by Mr. ADENSAMER (Austria), Mr. MAZZONI (Italy) and Mr. MADRID (Spain), endorsed the suggestion of the Australian delegation.

35. Paragraph 6, as amended, was adopted.

36. Paragraph 7 was adopted.

Title of the draft Model Law

37. Mr. HOWLAND (United Kingdom) noted that some delegations felt that the title of the Model Law was too long. Accordingly, he suggested the deletion of the words "legal aspects of".

38. Ms. BOSS (United States of America) said her delegation had concluded from its discussions with parties that would ultimately be dealing with the provisions of the Model Law that they did not understand that the Model Law was relevant to individuals engaging in forms of electronic commerce other than EDI, and that the title was too long. The term "electronic commerce", however, had been receiving increasing acceptance in the international community, and might be used in the title. To retain a long title which hinged on what was now only a minor part of the technological revolution would do a disservice to what would otherwise be quite an influential product.

39. Mr. CHOUKRI (Observer for Morocco) suggested that the title should read "Draft Model Law on EDI".

40. Mr. PHUA (Singapore) said that, since the Model Law dealt with commercial transactions conducted through electronic means, he endorsed the proposal to amend the title to "Draft Model Law on Electronic Commerce", in keeping with the suggestion by the representative of the United States of America.

41. Mr. LLOYD (Australia) endorsed that proposal and agreed that the term "electronic commerce" was becoming more and more widely used by people in the industry.

42. Mr. TELL (France) agreed that a shorter, more explicit title was needed for the draft Model Law and endorsed the United States proposal.

43. Mr. RENGER (Germany) agreed that the title of the Model Law should be shorter, but believed that the term "electronic commerce" would limit its scope of application since the Model Law did not apply solely to commercial transactions. His delegation would prefer a title such as "Model Law on EDI".

44. Mr. MAZZONI (Italy) favoured the title "Model Law on Electronic Commercial Transactions", which was clearer and translated easily into his language.

45. Mr. SANDOVAL LÓPEZ (Chile) endorsed the United States proposal.

46. Mr. ZHANG Yuqing (China) endorsed the title "Model Law on Electronic Commerce", adding that if that title was adopted, a definition of "electronic commerce" should be included in the text of the Model Law.

47. With regard to article "x", he favoured placing it in an annex to the Model Law. Furthermore, he hoped that the final draft of the Model Law would make clear that the scope of application was broad and included new technologies.

48. Mr. ANDERSEN (Observer for Denmark) endorsed the United States proposal. There was every indication that the term "electronic commerce" would be even more widely used in future years, a situation which made it more attractive in terms of marketing the Model Law.

49. Mr. Won-Kyong KIM (Observer for the Republic of Korea) endorsed the proposal of the United States of America. In reply to the representative of China, who had expressed concern that the Model Law contained no definition of the term "electronic commerce", he recalled that article 1 stated that the Model Law applied to data messages "used in the context of commercial activities". By using the term "electronic commerce" in the title of the Model Law, the Commission would play a leading role in defining terminology in the field of electronic data interchange.

50. Mr. MASUD (Observer for Pakistan) suggested that, since the Model Law dealt primarily with commercial transactions by means of electronic, optical and other related means, the title might be changed to "Model Law on Commerce through Electronic and Related Means", which had a broader scope than "electronic commerce".

51. Mr. MADRID (Spain) strongly supported the proposal of the representative of the United States of America.

52. Ms. REMSU (Canada) agreed that the shorter title "Model Law on Electronic Commerce" was more appropriate, especially since the term "electronic commerce" was gaining rapid acceptance, even in government circles. She therefore endorsed the proposal of the United States of America.

53. Mr. UCHIDA (Japan) sought clarification as to whether the term "electronic commerce" included telegram, telex and telecopy, the means of transmission covered under the Model Law.

54. Mr. ALLEN (United Kingdom) said that while he agreed a shorter title which contained the word "electronic" was needed for the Model Law, the term "electronic commerce" could be misleading because it implied that the Model Law was about the underlying commercial transaction, rather than the procedures governing communication. The Model Law contained provisions on the admissibility and retention of data messages and dealt with requirements of national legislation, regardless of whether the communication related to commercial activities. As a compromise, he proposed the title "Model Law on Electronic Communication", which emphasized that the Model Law dealt with the procedures for governing communications.

55. Mr. CHANDLER (United States of America) said that using the term "electronic communication" would be inappropriate and would cause confusion with international telecommunications. For that reason, his delegation opposed the United Kingdom proposal. In reply to the representative of Japan, he said that the term "electronic commerce" included EDI, electronic mail and all areas of electronic transmission including telex, telegram and fax. He agreed with the observer for the Republic of Korea that the Commission was breaking new ground with the Model Law and that it should therefore not hesitate to establish new terms where warranted. The term "electronic commerce" was being used in an

increasing number of areas precisely because it was less restrictive than the term "EDI".

56. Mr. CHOUKRI (Observer for Morocco) said that he was opposed to the title "Model Law on Electronic Commerce" because his delegation believed it would lead to confusion. He proposed the longer but clearer title "Draft Model Law on Commercial Transactions in the Electronic Field".

57. The CHAIRMAN said that there seemed to be a consensus that the Commission should adopt the title "Draft Model Law on Electronic Commerce" proposed by the representative of the United States of America.

58. The title of the draft Model Law, as amended, was adopted.

The meeting rose at 6.05 p.m.